IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CIVIL APPLICATION NO.2234 OF 2005
WITH
WRIT PETITION NO.9409 OF 2004

Shri J.Y. Marne & Ors.....Applicants

Versus

Union of India & Ors.. ..Respondents

Mr. V.S. Masurkar with Mrs. N.V. Masurkar for Applicants.
Mr. Y.S. Bhate, for Respondents.

CORAM: F.I. REBELLO &
MRS. R.S.DALVI, JJ.
DATE : 23RD DECEMBER,2005

P.C.:

. Considering the controversy the petition itself is taken up for hearing and has been disposed of.

2. In an Original Application filed by the Respondents in the Writ Petition before the Central Administrative Tribunal the Tribunal by its order dated 23rd June, 2002 passed the following directions:-

> "In the result the O.A. is allowed. We direct the respondents to consider the case of the Laboratory Attendants regarding promotional avenue and provide minimum two promotional avenues within a period of three months from the date of receipt of copy of this order. No order as to costs."

It is this order which is the subject matter of the present

petition.

2. Before the Central Administrative Tribunal one of the contentions urged on behalf of the petitioners who were respondents was that the Tribunal could not issue such direction placing reliance on the judgment in the case of 1999 SCC (L & S) 787. On the other hand the respondents who are original applicants before the Tribunal have placed reliance on the judgment of the Apex Court in the case of Council of Scientific and Industrial Research and Anr. Vs. K.G.S. Bhatt and Anr., 1989 SC 1972 and in the case of Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Government of Bihar and Ors., AIR 1988 SC 1033, which has taken a view that the opportunity of advancement has to be given. and the person who is appointed is not just for job but for the whole career and in the absence of promotional prospects the service is bound to degenerate and stagnation kills the desire to serve properly and as such it is expected that in a service realm, atleast two promotional avenues must be there.

3. Though the matter was placed on board only for vacating the stay, considering the narrow controversy by consent of the parties the petition itself has been heard. The view expressed by the Apex Court in Council of Scientific and Industrial Research & Anr. (supra) as also in Raghunath Prasad Singh (supra) was considered by another Bench of the Apex Court in the case of State of Tripura and Ors. vs. K.K.

Roy (2004) 9 SCC 65. The Apex Court in paragraph 6 held that the Appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. It is set out that despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom. The Court further observed as under:-

> "Promotion being a condition of service and having regard to the requirement thereof as has been pointed out by this Court in the decisions referred to hereinbefore, it was expected that the Appellant should have followed the said pricniple."

It is thus clear that the Apex Court has been pleased to declare the law bearing in mind the principles as set out in Articles 14 and 16 of the Constitution of India. That being the case the respondents herein were bound to follow the law declared by the Apex Court. This is not the case where the Tribunal has issued any direction directing the promotional avenues by creating posts. What the Tribunal has set out is that the respondents are bound to follow the law declared by the Apex Court. That being the case we see no merit in the present Writ Petition. Rule discharged. Writ Petition

accordingly dismissed. Interim order granted stands vacated. The respondents in the Civil Application are directed to comply with the directions of the C.A.T. within a period of six months from today. Needless to say that it is for the petitioners to create promotional avenues bearing in mind the various aspects.

(F.I. REBELLO, J.)

(MRS. R.S.DALVI, J.)